Nos. 13963, 14031, 14032, 14033, 14034

In the United States Court of Appeals for the Ninth Circuit

LEE GWAIN TOY and LEE GWAIN DOK, by Their Father and Next Friend LEE BEN KOON,

Appellant,

vs.

DEAN G. ACHESON, Secretary of State of the United States,

Appellee.

APPELLEE'S BRIEF

On Appeal from the United States District Court for the District of Oregon

C. E. LUCKEY,
United States Attorney for the District of Oregon

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Assistant United States Attorney,

Of Attorneys for Appellee.

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STATUTES

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BRIEF FOR APPELLEE

INTRODUCTORY STATEMENT

The appeal in this case and consolidated cases Nos. 13963, 14031, 14032, and 14034 are concerned with claims to United States nationality by Chinese who are not residents of the United States, founded upon alleged blood relation-

ship as children to fathers who are citizens of the United States.

STATEMENT OF THE CASE

The appellants herein claimed to be children of Lee Ben Koon, alleged to be their father and a citizen of the United States at the times of their respective births in China. Paragraphs VII and VIII of the complaint allege:

> "VII. That said Lee Ben Koon caused to be filed with the American Consul General at Hong Kong his affidavit—application, dated February 9, 1952, prepared in accordance with the regulation for a passport or travel document in behalf of the said Lee Gwain Toy and prepared a similar affidavit—application, dated March 17, 1952, in behalf of Lee Gwain Dok, in order that the plaintiffs would be eligible to purchase transportation to the United States in order to apply for admission as Citizens thereof at a port of entry under the Immigation Laws.
>
> "VIII. That although the plaintiffs have been interviewed by the said American Consulate at Hong Kong, no action has been taken by the said Consulate concerning the issuance of passports or travel documents and the plaintiffs believe and therefore allege that the said American Consulate has no intention of issuing to plaintiffs passports or travel documents, and that the said American Consulate's failure to issue such passports or travel documents constitutes an unreasonable and unfair delay and a denial of plaintiffs' rights as American Citizens, and plaintiffs have been thereby denied from coming to the United States and from

applying and presenting the proof of their Citizenship to the Immigration and Naturalization Service at a port of entry; that since the said American Consulate has refused to take any action as aforesaid, there has been no official denial of the plaintiff's petitions by the said American Consulate and, therefore, the defendant did and has refused to take cognizance of any appeal, and that the said American Consulate by their delaying tactics has prevented the plaintiffs from taking any action by appeal or otherwise, and the plaintiffs' only remedy is under Section 503 of the Nationality Act of 1940 for the reason that they can obtain no relief whatsoever from the said American Consulate."

Defendant filed its answer to plaintiffs' complaint and for lack of information denied all of the allegations contained in the foregoing paragraphs VII and VIII.

The pertinent parts of the complaints in the consolidated cases herein are set forth in Appendices A to D inclusive as follows:

Appendix A—Case No. 13963—Chin Chuck Ming and Chin Chuck Sang, by Their Next Friend and Father, Chin Ah Poy vs. John Foster Dulles, Secretary of State of the United States of America.

Appendix B—Case No. 14031—Joong Tung Yeau, by His Brother and Next Friend Joong Yuen Hing, vs. Dean Acheson, Secretary of State of the United States of America.

Appendix C—Case No. 14032—Lee Wing Gue, by His Father and Next Friend Lee Sun Yue vs. Dean

Acheson, Secretary of State of the United States of America.

Appendix D—Case No. 14034—Louie Hoy Gay, by His Father and Next Friend Louie Foo vs. Dean Acheson, Secretary of State of the United States of America.

Except as indicated above, there were no allegations that any of the appellants *had been denied such right or privilege* by a Department or Agency, or Executive Official thereof, *upon the ground that he or she was not a National of the United States,* a jurisdictional requirement.

SPECIFICATIONS OF ERROR

Appellants have made four specifications of error. The issues set forth in specifications 1, 3 and 4 have been disposed of in cases decided subsequent to the orders of dismissal entered in the within causes and the correctness of these specifications of error is admitted. Specification 2, however, raises a very important jurisdictional question.

> "2. That the trial court erred in dismissing the within cause on the ground that the Department of State, through its Consulate officer has never denied appellants' application for entry into the United States."

A separate transcript of record has been filed in Case No. 13963, *Chin Chuck Ming, etc.* vs. *Dulles,* setting forth four specifications of error of which specifications 2, 3 and 4 are no longer material to this appeal in that decisions

rendered subsequent to the filing of this appeal have rendered the questions therein presented moot. Specification of error 1, similar in import to specification of error No. 2 above, is as follows:

> "1. That the trial court erred in dismissing the within cause on the ground that the officer of the Department of State had never denied appellants' application for entry into the United States, in that appellants' complaint sets forth facts showing that said officer has unfairly, unreasonably and arbitrarily failed to act on their applications, and such failure is tantamount to a denial under Section 903, Title 8, USCA."

QUESTIONS PRESENTED

JURISDICTION

(a) Is it necessary under § 503 of the Nationality Act of 1940, (§ 903, Title 8, USC) to allege *that a right or privilege* as a National of the United States *was claimed* and that *such right or privilege* was denied by Department or Agency or Executive Official thereof *upon the ground that appellants were not Nationals of the United States.*

(b) The following cases consolidated herein brought by the father (or brother) and/or the next friend of said appellants were not brought in accordance with Rule 17(c) of the Federal Rules of Civil Procedure in that said appellants were not minors and the complaints do not contain any allegation of incompetence.

Case No.	Plaintiff	Age when complaint was filed
13963	Chin Chuck Sang	24
14031	Joong Tung Yeau	26
14032	Lee Wing Gue	22
14034	Louie Hoy Gay	44

ARGUMENT

JURISDICTION

(a) The District Court had no jurisdiction of the within actions and the same should be dismissed for the reason that the complaints failed to incorporate the essential jurisdictional allegations of § 503 of the Nationality Act of 1940 (8 USCA § 903), to-wit, they did not allege that as a National of the United States there had been a *denial of a right* or *privilege* by Department, Agency or Executive Official, *on the ground that he is not a National of the United States.*

Paragraphs VII and VIII herein and the pertinent paragraphs of the related cases consolidated herein quoted as Appendices A to E inclusive show on the face of the complaints that the applications for passport had not been finally processed and therefore there had not been a denial of a right or privilege on the ground applicants were not Nationals of the United States, an essential jurisdictional requirement under § 903, Title 8, USCA. This conclusion is clearly supported in *Dulles* v. *Lee Gnan Lung,* 212 F. 2d 73,

75 (C.A. 9). This Court stated as follows:

"To state a claim upon which relief could be granted in an action under § 503 of the Nationality Act of 1940, 8 USCA, § 903, *it was necessary to allege* that the plaintiff in such action had claimed *a right or privilege* as a National of the United States *and had been denied such right or privilege* by a Department or Agency, or Executive Official thereof, *upon the ground that he was not a National of the United States.* The complaint in this action did not so allege.

"The complaint alleged that in February, 1951,[3] Kut caused to be prepared an 'identification affidavit'[4] for the purpose of securing from an American consul in Hong Kong a 'travel document'[5] to enable Lung to travel to the United States, and that the 'identification affidavit' was filed with the consul shortly after its preparation;[6] *but the complaint did not allege that Lung made or filed the 'identification affidavit,' or that he authorized such making or filing. Much less did it allege that Lung had claimed a right or privilege as a national of the United States.*

"The complaint alleged, in substance, that, up to the time the action was instituted—February 19, 1952—the consul had failed and neglected to issue a 'travel document' to Lung; *but it did not allege that Lung had been denied a 'travel document.' Much less did it allege that Lung had been denied a right or privilege as a national of the United States upon the ground that he was not such a national. . .*" (Italics ours) (Footnotes omitted)

See also *Fong Wone Jing* vs. *Dulles,* 217 F. 2d 138, 140 (C.A. 9 Nov. 23, 1954); *Elizarraraz* vs. *Brownell,* 217 F. 2d

829, 830-831 (C.A. 9); *Clark* vs. *Inouye,* 175 F. 2d 740, 742 (C.A. 9, 1949); and *Lee Hung, Lee Siu and Lee Jam* vs. *Acheson,* 103 F. Supp. 35.

In *Dong Chew, et al* vs. *Dulles,* 32093, DC N.D. Cal., decided May 21, 1953, Judge Murphy stated:

> "Invocation of 8 USC 903 is predicated upon allegation that a purported National's rights have been denied on the ground *that he is not a National of the United States.*" (Italics ours)

Appellants contend that the refusal or delay of the Consul to issue a United States passport is tantamount to a denial of a right and privilege of a National on the ground that the person seeking such passport is not a National. The contention is without merit. A passport is *not evidence of citizenship.*

Urtetiqui vs. *D'Arcy,* 34 U.S. 692;
In re Gee Hop, 71 F. 274 (DC N.D. Cal. 1895);
Edsel vs. *Mark,* 179 F. 292 (C.A. 9);
Miller vs. *Sinjen,* 289 F. 388 (C.A. 8) (1923);
Lee Tong Tai vs. *Acheson,* 104 F. Supp. 503 (Ed. Tenn. 1952);
Scott vs. *McGrath,* 104 F. Supp. 267 (E.D. NY. 1905, 1952).

A passport is issued only in the discretion of the Secretary of State, *Perkins* vs. *Elg,* 307 U.S. 325, and is generally directed to a foreign state for the purpose of protecting the holder of the passport. See cases cited above, also *U. S.* vs.

Browder, 312 U.S. 335 (1941). *Miller* vs. *Sinjen,* Supra, was a case in which a United States passport was denied by the Charge d' Affairs, Mexico City. The 8th Circuit said, page 394:

> ". . . *a finding* that *plaintiff* had *ceased* to be a *citizen of the United States was not necessary to action* of the *State Department* in *denying* him a passport for the reason that the granting of a passport by the United States *is* and always has been a *discretionary* matter; and a passport when granted is not conclusive *nor is it even evidence that the person to whom it is granted* is a citizen of the United States. *Urtetiqui* vs. *D'Arcy,* 34 U.S. 692; In re *Gee Hop,* 71 F. 274; *Edsel* vs. *Mark,* 179 F. 292, 23 Op. Atty. Gen. 509." (Italics ours)

In the case *Lee Hung* vs. *Acheson, supra,* the contention was made that an application had been pending with the American Consulate at Canton and later at Hong Kong, for a period of over 6 years, and that plaintiff had been unable to secure a visa, permit or permission to travel to the United States. Also, in *Dulles* vs. *Lee Gnan Lung, supra,* where the complaint alleged in substance that up to the time the action was instituted — February 19, 1952 — the Consul had failed and neglected to issue a "travel document" to Lung. In both of these cases the court held that the complaints should affirmatively show that plaintiffs were denied a right or privilege on the ground that they were not Nationals of the United States. Since these essential jurisdictional allegations were absent from the complaints,

they did not therefore state facts upon which relief could be granted.

For the court in this case to construe the failure of the American Consul at Hong Kong to act, within a period of time which the appellants deem reasonable, a denial of their applications would be merely an assumption based on an argumentative allegation in the complaint, which does not, in any respect, conform to the requirements for a denial set out in the statute. This would be in contradiction of the well-settled principle that there is a presumption against the jurisdiction of a Federal court unless the contrary affirmative appears in the record, and any doubt should be resolved against jurisdiction.

> *Mansfield C. & L. N. Ry. Co.* vs. *Swan,* 111 U.S. 379;
> *In re Smith* vs. *U.S.,* 94 U.S. 455;
> *Baltimore Co.* vs. *Thompson,* 8 F.R.D. 96.

A positive allegation of the facts upon which federal jurisdiction is based must be alleged and jurisdiction cannot be inferred argumentatively from the pleadings.

Hanford vs. *Davis,* 163 U.S. 273. The court, at page 280, said:

> "Essential facts averred must show, not by inference or argumentatively, but clearly and distinctly, that the suit is one the circuit court is entitled to take cognizance."

In support of the proposition that the delay of the Consul General to act on the applications for travel documents is

tantamount to a denial, appellants cite the case of *Look Yun Lin* vs. *Acheson,* 95 F. Supp. 583. In that case, the American Consulate denied the application of Look Yun Lin and he then attempted to have issued to him a certificate of identity and the claim for this certificate was carried to Washington, D. C., after complying with all of the regulatory provisions set up in Title 22, Code of Federal Regulations, particularly 50.28. The Secretary of State having failed to act after a period of 8 months, the court in this case ordered that defendant issue a certificate of identity to plaintiff for the limited purpose of proceeding to the United States in order to testify as a witness in her own behalf at the trial of the pending case. That case was decided by Judge Harris on February 8, 1951. Subsequently and on May 4, 1954, the 9th Circuit in the case of *Dulles* vs. *Lee Gnan Lung, supra,* ruled that the District Court had no jurisdiction to make such an order directing or requiring the issuance of a certificate of identity.

Appellants likewise cite the case of *Lee Bang Hong, et al,* vs. *Acheson,* 110 F. Supp. 48, which holds that an oversight of the American Consul at Hong Kong to process the application of plaintiff before plaintiff's sixteenth birthday, did not divest plaintiff of his United States citizenship by reason of Section 601, Sub-sections (g) and (h) of 8 USCA. Plaintiff having reached the age of sixteen, the American Consulate denied his application upon the ground that he could not take up residence in the United States on or be-

fore his sixteenth birthday. District Judge Metzger, decided that this was a denial of his rights and privileges as a United States citizen. It is submitted that this case is not authority for the proposition that failure to act is tantamount to a denial.

The next case cited by appellants in support of the aforesaid proposition is the case of *Lee Hong* vs. *Acheson,* 110 F. Supp. 60, in which case plaintiff Lee Soon born in China on June 25, 1935, filed an application on January 17, 1951 with the American Consulate General at Hong Kong for documentation which would allow plaintiff to proceed to the United States. The travel document was issued at one o'clock P.M. on June 23, 1951, and within four hours thereafter, plaintiff boarded an aircraft and departed from Hong Kong en route to the United States. The plane was delayed for approximately 22 hours in Tokyo, Japan, because of mechanical failure, and on account thereof, plaintiff did not arrive in Honolulu until June 25, 1951, his sixteenth birthday. The government contended for a literal construction of § 201(g), 8 USCA § 601(g), which required plaintiff's arrival in the United States prior to his sixteenth birthday. Plaintiff then filed an action in that case under 8 USCA Section 903, praying to be adjudicated a United States citizen. The government conceded that plaintiff had acquired the status of a "citizen of the United States" at birth. The court stated that plaintiff, having made a bona fide attempt to take up residence in the United States prior to

attaining his sixteenth birthday, had qualified as one who had made substantial compliance with § 201(g), 8 USCA § 601(g), and was thereafter entitled to be adjudicated a citizen of the United States. In the opinion, Judge Carter said:

> "Denial of sufficient time within which to exercise a right is the same as the denial of the right itself."

This language, the government contends, is inappropriate, since the documentation was issued 37 hours prior to the time that plaintiff would attain the age of sixteen, and normally would have been sufficient time to enable plaintiff to arrive in the United States prior to the attaining of the age of sixteen. The facts show that it was due to other circumstances beyond the control of this plaintiff, that caused his failure to arrive in the United States on time, rather than the failure of the Consul to grant his documentation. Would the court have used the same language if plaintiff had gone down at sea and there rescued by inhabitants of an infrequently visited island and months or years elapsed before he could reach civilization? Must the consul have anticipated that plaintiff's plane would have mechanical trouble in Japan? There being no denial, express or implied, to the issuance of the documentation, and the facts being at great variance to the within cause, it is submitted that this case is not authority for the proposition cited by the appellants herein.

Appellants also cite *Acheson* v. *Yee King Gee,* 184 F. 2d 382, the same being a suit brought by the father for his minor son, under the provisions of § 503 of the Nationality Act of 1940, 8 USCA, § 903. That case called for the interpretation of § 201(g), 8 USCA, § 601(g), which, in so far as is material herein, provides:

> "The following shall be nationals and citizens of the United States at birth: . . .
>
> "(g) A person born outside the United States . . . of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years residence in the United States . . . at least five of which were after attaining the age of sixteen years, the other being an alien: . . ."

The proof showed that the father, over a period of approximately 12 years, resided in the United States for a period of eight years and four months prior to appellee's birth. During this period, the father had made several trips to China and if the time spent abroad were included as part of his residence in this country, then the period of his residence in this country would be nearly twelve years prior to the date of appellee's birth. The court held that the term "resident" as here used, is entitled to a broad and liberal construction. This case has no application to the within cause.

The case of *Nuspel* vs. *Clark,* 83 F. Supp. 963 is also cited as supporting the aforementioned contention of appellants. In this case the court in part held as follows:

> "... The unreasonable delay in granting the application for an immigration visa for the wife of the plaintiff constitutes a denial of a right or privilege of a National upon the ground that he is not a National ..."

In this case plaintiff's wife was residing in Hungary and the plaintiff was residing in the United States, he having previously been naturalized as a citizen of this country, and subsequent to his being naturalized he spent some time in Hungary, but having returned to the United States his citizenship was challenged. The foreign consul in Hungary was holding in abeyance the issuance of the visa to plaintiff's wife pending the ultimate determination of plaintiff's status as a citizen. Plaintiff had been arrested on a warrant charging him with illegal entry into the United States; thereafter hearings were had before an inspector of the United States Department of Justice, Bureau of Immigration and Naturalization, with the object in view of deporting him. The court held that the plaintiff was a citizen of the United States. The above quotation seems very remote to the issues involved since it was the visa to plaintiff's wife that was being held up, and if anyone's right or privilege was being violated, it would be plaintiff's wife rather than plaintiff. It is urged that this case is little if any support for the contention of appellants herein.

It has been brought out in other cases considered by the Ninth Circuit Court of Appeals that the American Consul

at Hong Kong had been literally deluged with applications to come to the United States by persons who claimed they had fathers who were American citizens. As the effective date of the Immigration and Nationality Act of 1952, Public Law 414, approached, the filing of applications greatly increased in number and obviously the Consul had no means of knowing anything about these persons. The Consul would certainly not grant documentation without having evidence as to the truthfulness of the claim of the applicants and he therefore declined to act pending receipt of such information. The within suits were then filed incorporating the allegation that the American Consul had failed and refused to grant the documentation. It has been reported that there were at least 1800 applications pending before the Consul prior to the effective date of the 1952 Nationality Act, and surely it was a physical impossibility to have acted upon all applications before the new act became operative.

In line with the foregoing statements, the case of *Ling Share Yee, et al* v. *Acheson,* 214 F. 2d 4, is in point. There, the minor plaintiff applied to the American Consul at Hong Kong, for travel documents but action thereon by the consul was withheld, pending the production of new and additional evidence. The action was filed without the consul having denied plaintiffs' application. The District Court concluded that the delay in acting upon the application by the American Consul did not amount to a denial, since the delay was attributable to neglect of plaintiffs to furnish additional

evidence. The court of appeals affirmed the ruling of the lower court. A somewhat similar situation prevailed in Hong Kong prior to the effective date of the 1952 Nationality Act, in that the American Consul, being deluged with applications, had not had the opportunity to pass upon the bulk of the filed applications.

In appellant's brief, counsel has cited numerous cases and has given considerable space to the discussion of the considerations pertaining to the sufficiency of a complaint when challenged by a defendant's motion to dismiss. Several cases are cited to show the inferences and legal conclusions that may reasonably issue in favor of claimed validity and sufficiency of a complaint. Generally, we have no quarrel with these general principles of law, and therefore it is not believed necessary to discuss these many cases cited by appellant.

It is, of course, fundamental that suits against the United States may be maintained only by permission, in the manner described in the consent statute, and the liability of the United States to suit cannot be extended beyond the plain language of the statute authorizing it. *Monroe* v. *U. S.,* 303 U.S. 36, 41; *Eastern Trans. Co.* v. *U. S.,* 272 U.S. 675, 678; *Reid* v. *U. S.,* 211 U.S. 529, 538. It is submitted that the complaints herein do not meet this test.

(b) The following cases consolidated herein brought by the father (or brother) and/or the next

friend of said appellants were not brought in accordance with Rule 17(c) of the Federal Rules of Civil Procedure in that said appellants were not minors and the complaints do not contain any allegation of incompetence.

Case No.	Plaintiff	Age when complaint was filed
13963	Chin Chuck Sang	24
14031	Joong Tung Yeau	26
14032	Lee Wing Gue	22
14034	Louie Hoy Gay	44

The Ninth Circuit in the case of *Dulles* vs. *Lee Gnan Lung,* supra, said that suit through a next friend is authorized, under Rule 17(c) Federal Rules of Civil Procedure, only if the plaintiff is an infant or otherwise incompetent. According to the pleadings in that case, Louie Hoy Gay, Joong Tung Yeau, and Chin Chuck Sang had each reached his majority before his action was instituted, and there is no allegation that either was incompetent. The *Lung* opinion does not specifically rule on the question whether such a defect is considered fatal, but the following quotation (p. 75) indicates that the Court of Appeals believed that it was:

> "Section 503 of the Nationality Act of 1940, 8 USCA § 903, did not give any court jurisdiction of any action other than an *action instituted by a person who*

had claimed a right or privilege as a national of the United States and has been denied such right or privilege by a Department or agency, or executive official thereof, upon the ground that he was not a national of the United States. This action does not appear to have been so instituted." (Italics ours)

The aforementioned appellants, at the time the complaints were filed, had attained the ages as aforesaid, and in none of the cases did the pleadings contain an allegation that the said appellants were incompetent. As to these appellants, it is contended that the actions brought by the father and/or next friend of these individuals were not authorized and their complaints should accordingly be dismissed.

CONCLUSION

It has been clearly shown herein that the essential jurisdictional allegations have been omitted from each and all of appellants' complaints herein. There is therefore no basis upon which the lower court can grant the relief prayed for. It is submitted that the determination of the lower court must be sustained.

Respectfully submitted,

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United States Attorney
for the District of Oregon

VICTOR E. HARR,
Assistant United States Attorney
Of Attorneys for Appellee

APPENDIX A

COMPLAINT No. 13963

CHIN CHUCK MING and CHIN CHUCK SANG, by their next friend and father CHIN AH POY, Plaintiffs,

vs.

DEAN ACHESON, Secretary of State of the United States of America, Defendant.

"IX. That Chin Ah Poy caused to be filed with the American Consul General at Hongkong his affidavit-application dated September 6, 1951, prepared in accordance with the regulations, for travel documents for the said Chin Chuck Ming and Chin Chuck Sang so that they would be eligible to purchase transportation to the United States in order to apply for admission as citizens thereof at a port of entry under the immigration laws.

"X. That although the plaintiffs have been steadily available for examination by the American Consul General at Hongkong, he has not issued the requested travel documents; that the failure of the said Consul General to issue the documents after a lapse of so much time is unfair, unreasonable, arbitrary and is equivalent to a denial of the plaintiffs' applications and their rights as American citizens; that the plaintiffs thereby have been stopped from coming to the United States and from applying to and presenting proof of their American citizenship to the Immigration Service at a port of entry; that since the Consul General has not denied the said applications there has been no official denial and therefore the defendant would, as could

be expected, refuse to take cognizance of any appeal, as under Section 50.28 of Title 22, Code of Federal Regulations, leaving the only available remedy the present action."

APPENDIX B

COMPLAINT No. 14031

JOONG TUNG YEAU, by his brother and next friend, JOONG YUEN HING, Plaintiff,

vs.

DEAN G. ACHESON, Secretary of State of the United States of America, Defendant.

"VII. That during August, 1947, plaintiff's brothers, Joong Yuen Hing and Joong Bock Foon caused to be prepared an identification affidavit, stating their relationship to this plainitff and that the said affidavit was prepared as an application for the purpose of obtaining from the American Consulate at Canton, China, a passport or travel document to enable the plaintiff to purchase transportation to the United States, and that the said identification affidavit was forwarded on August 20, 1947 and was received by the said Consulate at Canton, China in due course, so that the plaintiff could apply for admission under the Immigration Laws at a port of entry in the United States; that because of the closing of the American Consulate at Canton, China in 1949, the identification affidavit aforesaid was forwarded and was received by the American Consulate General at Hong Kong for consideration and action. That although the plaintiff has been interviewed by the said American Consulate at Hong Kong, no action has been taken by the said

Consulate concerning the issuance of a passport or travel document and the plaintiff believes and therefore alleges that the said American Consulate has no intention of issuing to plaintiff a passport or travel document, and that the said American Consulate's failure to issue such passport or travel document constitutes an unreasonable and unfair delay and a denial of plaintiff's rights as an American Citizen, and plaintiff has been thereby denied from coming to the United States and from applying and presenting the proof of his Citizenship to the Immigration and Naturalization Service at a port of entry; that since the said American Consulate has refused to take any action as aforesaid, there has been no official denial of the plaintiff's petition by the said American Consulate and, therefore, the defendant did and has refused to take cognizance of any appeal, and that the said American Consulate by their delaying tactics has prevented the plaintiff from taking any action by appeal or otherwise, and the plaintiff's only remedy is under Section 503 of the Nationality Act of 1940 for the reason that he can obtain no relief whatsoever from the said American Consulate."

APPENDIX C

COMPLAINT No. 14032

LEE WING GUE, by his father and next friend, LEE SUN YUE, Plaintiff,

vs.

DEAN ACHESON, Secretary of State of the United States of America, Defendant.

"VIII. That during October, 1948, plaintiff's father, Lee Sun Yue, caused to be prepared and filed

with the American Consul General at Canton, China an application for the issuance of a passport or travel document as provided for by the regulations of the Department of State so that the plaintiff would be eligible to purchase transportation to the United States in order to apply for admission as a citizen thereof under the Immigration Laws; that said application and affidavit was forwarded by Air Mail on October 20, 1948 and filed at the American Consul General's office on or about October 26, 1948 so that the plaintiff could apply for admission under the Immigration Laws at a port of entry in the United States; that because the American Consulate at Canton was closed in 1949, the affidavit and application aforesaid was forwarded to the American Consulate at Hong Kong for consideration and action.

"That although plaintiff has been interviewed by the American Consulate at Hong Kong, no action has been taken by said Consulate concerning the issuance of a passport or travel document and the plaintiff believes and therefore alleges that the said American Consulate at Hong Kong has no intention of issuing to plaintiff a passport, and that the said American Consulate's failure to issue such passport or travel document constitutes an unreasonable and unfair delay and a denial to plaintiff of his right as an American Citizen from coming to the United States and from applying to and presenting to the Immigration and Naturalization Service at a port of entry in the United States proof of his American nationality and citizenship; that since the Consul has refused to take any action as aforesaid, there has been no official denial of plaintiff's petition and affidavit by the said Consul and, therefore, the Secretary of State has refused to take cogni-

zance of any appeal and that the said American Consulate by their delaying tactics has prevented the plaintiff from taking any action by appeal or otherwise and the plaintiff's only remedy is under Section 503 of the Nationality Act of 1940."

APPENDIX D

COMPLAINT No. 14034

LOUIE HOY GAY, by his father and next friend, LOUIE FOO, Plaintiff,

vs.

DEAN G. ACHESON, Secretary of State of the United States of America, Defendant.

"VIII. That said Louis Foo caused to be filed with the American Consul General at Hong Kong, China, a written application for the issuance of a Passport or Travel Document in July, 1952, as provided for by the regulations of the Department of State, so that the plaintiff, Louie Hoy Gay, would be eligible to purchase transportation to the United States in order to apply for admission as a Citizen thereof under the Immigration Laws; that said application was returned to said Louie Foo, father of Louie Hoy Gay, by the American Consul at Hong Kong, China, under date of August 15, 1952, with a request by said American Consul to file a new affidavit and/or application, prepared in accordance with an information sheet enclosed therewith.

"That in pursuance of said foregoing request, said Louie Foo, in behalf of his said son, Louie Hoy Gay,

transmitted to the American Consul at Hong Kong, China, as requested by him, under date of October 24, 1952, another application, including therein all of the additional information requested by said American Consul, and said American Consul received the same on November 3, 1952, and said application contained all of the information provided for by the regulations of the Department of State so that plaintiff, Louie Hoy Gay, would be eligible to purchase transportation to the United States in order to apply for admission as a Citizen thereof under said Immigration Laws.

"IX. That although the plaintiff, Louie Hoy Gay, has been interviewed by the said American Consul at Hong Kong, with respect to said applications, no action has been taken by the said American Consul concerning the issuance of Passport or Travel Documents to said Louie Hoy Gay, and the plaintiff believes and therefore alleges that said American Consul has no intention of issuing to plaintiff, Louie Hoy Gay, Passports or Travel Documents and that said American Consul's failure to issue such Passports or Travel Documents constitutes an unreasonable and unfair delay and a denial of plaintiff, Louie Hoy Gay's rights as an American Citizen and plaintiff, Louie Hoy Gay, has been thereby denied the right to come to the United States and apply and present the proof of his Citizenship to the Immigration and Naturalization Service at a port of entry in the United States; that since the said American Consul has refused to take any action as aforesaid, there has been no official denial of the plaintiff's petition by the said American Consul and, therefore, the defendant did and has refused to take cognizance of any appeal, and that the said American Consul, by his delaying tactics, has prevented the plaintiff,

Louie Hoy Gay, from taking any action, by appeal or otherwise, and the plaintiff's only remedy is under and by virtue of Section 503 of the Nationality Act of 1940, for the reason that said plaintiff, Louie Hoy Gay, can obtain no relief whatsoever from said American Consulate in the premises."